

UNITED STATES DISTRICT COURT OF
THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

FILED

2025 JUN -2 P 1:56

CIVIL ACTION NUMBER
5:17-cv-0462-MHH

UNITED STATES OF AMERICA,
ex rel, CHRISTOPHER N. MCCUTCHEON

PLANTIFFS,

v.

JOHN HORNBUCKLE
Defendant

MOTION TO DISMISS WITH PREJUDICE FOR FAILURE TO PROSECUTE

Comes now, the Defendant, John Hornbuckle pro se, and respectfully requests that this Honorable Court grant this Motion to Dismiss this action for failure to prosecute, pursuant, Rule 41(b) of the Federal Rules of Civil Procedure.

On November 8th, 2024, I John Hornbuckle pro se, filed a response (DOC # 89), with HONORABLE JUDGE MADELINE HUGHES, to a MEMORANDUM OPINION mailed to me while in transit to a different prison, see DOC 86 and 88. In this response (DOC #89), I address several errors and make motions to compel the plaintiff to produce evidence to support his claims.

The MEMORANDUM OPINION makes several assumptions in error. Among the errors is the issue of standing, which is only established if a violation of 31 U.S.C. Sec. 3729 FALSE CLAIM ACT has been committed.

I, John Hornbuckle, have made no such claims, nor have I been accused of making any such claims. Therefore, MCCUTCHEON has no standing to even bring this case against me, this is a false claim and is null and void, ab initio.

The plaintiff, CHRIS N. MCCUTCHEON deemed to have unclean hands, has no standing, therefore has placed the Court in a position to be void of Subject Matter Jurisdiction. In my response (DOC# 89), I motioned the court to require the plaintiff to show cause and produce evidence of a violation of the FCA to establish standing, and produce evidence, verifying a claim the plaintiff may have as to a damage.

It has been approximately 180 days since I filed the motion compelling the plaintiff to comply with my lawful request, establish proper standing, provide evidence to support his position, and submit a verified claim upon which relief can be granted. The plaintiff has remained mute and has not produced any evidence to give his claim merit and therefore should be dismissed for WANT OF PROSECUTION.

I, John Hornbuckle pro se, therefore MOTION TO DISMISS WITH PREJUDICE FOR FAILURE TO PROSECUTE AND FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED.

REASONS IN SUPPORT OF MOTION

1. This action commenced on 24th of March 2017.
2. Despite the filing of the complaint, the plaintiff, CHRISTOPHER N. MCCUTCHEON, has failed to actively prosecute this action. DOC 89 filed 8th of November 2024.
3. The plaintiff has been given ample opportunity to prosecute this action, and their lack of diligence is apparent.
4. The Defendant has been prejudiced by the delay and lack of progress in this action; firstly, having ineffective assistance of counsel not responding, later in having to defend himself in this fraudulent action, and at a great disadvantage from being imprisoned, having limited resources.
5. Under FEDERAL RULES OF CIVIL PROCEDURE Rule 41(b) the Court has the discretion to dismiss an action for failure to prosecute.
6. Rule 8.01 (FRCP 41) Dismissal for Failure to Prosecute. If a civil case has been pending for six (6) months without any action, the Court may order the appropriate party to show cause why its claims should not be dismissed for failure to prosecute.
7. The Court has a strong interest in the efficient administration of justice and the dismissal of inactive cases.

WHEREFORE, PREMISES CONSIDERED, the Defendant, JOHN HORNBUCKLE pro se, respectfully requests that this Court enter an Order dismissing this action for failure to prosecute.

SERVICE

This motion is being served on the plaintiff, CHRISTOPHER N. MCCUTCHEON, by certified mail at Battle and Winn LLP, 2901 2nd Ave S #220, Birmingham Alabama 35233. Notice to the agent is notice to the principal and notice to the principal is notice to the agent. A copy of this motion is being served on the Clerk of Court.

CERTIFICATION

I hereby certify that a copy of this motion was served on the Clerk of Court.

CERTIFICATE OF NOTICE OF SERVICE

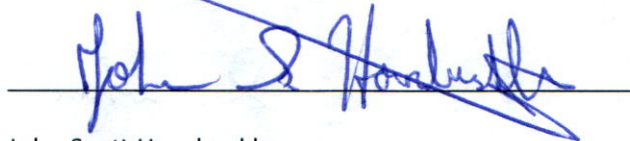
JUDGE OF THE DISTRICT COURT OF ALABAMA, HONORARY MADELINE HUGHES HAIKALA UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHEASTERN DIVISION

Because this MOTION is submitted Pro Se it is requested that it be liberally construed in accordance with Haines v. Kerner, 404U.S.C. 519, 529, (1972), and hold Mr. Hornbuckle to less stringent, in standard, than formal pleadings drafted by lawyers. Wherefore the reasons stated, Mr. Hornbuckle amicably PRAY that this Honorable Court GRANT the MOTION as submitted.

CERTIFICATE OF SERVICE

I, John Scott Hornbuckle, certify that on 28th May 2025, by mail this submission and any exhibits attached were sent to the Clerk of Court's Office to be docketed and by this said office, made electronically available to all attorneys or record including the United States Attorney of the Northern District of Alabama as well as the Honorable Attorney General of The United States of America.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "John S. Hornbuckle", is written over a horizontal line.

John Scott Hornbuckle
Register Number 96094-509
Pensacola FPC
P.O. Box 3949
Pensacola, FL 32516

John Hornbuckle #96094-509
Federal Prison Camp
P.O. Box 3949
Pensacola, FL. 32516

Retail



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OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
HONORARY JUDGE Madeline Hughes Hall
ATTN: Greer M. Lynch, Clerk of Court
1729 5th Avenue North
Birmingham, AL. 35203

SE-11-V
JUN 03 2025

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

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REQUIRED